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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,860	09/26/2003	Carmela L. Belcastro	5389	9766

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Charles I. Brodsky, Esq.
2 Bucks Lane
Marlboro, NJ 07746

EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,860

Applicant(s)

BELCASTRO, CARMELA L.

Examiner

Randall Chin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Root '790 in view of Kristofek 2003/0213078 (hereinafter Kristofek '078).

The patent to Root '790 discloses a scrubbing brush (Fig. 21) comprising a shell or handle 402 and 403 having a "hand-contoured grip" (Fig. 21) at a first end 403 and a fixedly adjustable swivel 460, 462 (col. 7, lines 32-49) at an opposite second end 402 of the handle to angularly orient a plane of rotation of the brush with respect to a length of the handle (note that the entire section 402 in Fig. 21 is deemed to be at the handle's "second end"), a bristled brush (Figs. 18 and 19) detachably coupled (col. 5, lines 33-36) to said swivel and rotatable (col. 7, lines 2-7) with respect thereto, motor means 404 within said handle for imparting at least one of a clockwise and counter-clockwise

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rotation to said brush, and an electric battery pack 406 within said handle for manually energizing said motor means to operation when desired (col. 7, lines 11-14). The patent to Root '790 teaches all of the recited subject matter with the exception of the handle being telescopic and of adjustable length. The reference to Kristofek '078 teaches a telescopic handle arrangement 4, particularly, a telescopic handle 30 of adjustable length. It would have been obvious to one of ordinary skill in the art to have provided Root's existing handle arrangement with an adjustable handle arrangement having a telescopic handle 30 as taught by Kristofek '078 for the purpose of simply enabling access to harder-to-reach areas for scrubbing functions.

Note that Root's scrubbing brush is intended to be utilized in an environment where water is present (col. 1, lines 50-51, for example). In any case, as for claim 1 specifically reciting that the brush is a "bathtub" scrubbing brush, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As for claim 3, Root's "battery pack" 406 is rechargeable (col. 1, lines 42-44) and is deemed to be rechargeable from electric utility line connection when hooked up to a recharger through a wall socket.

As for claim 6, to have made the modified Root device of plastic would have been obvious to one skilled in the art in order to make it lightweight and to enable mass production of the device. Clearly, the bristled brush and telescopic handle have a cross-section. As for claim 6 reciting that they are of a cross-section dimension to seat within a vertical stand when maintained in a non-operating state, such "vertical stand" is not deemed a positive limitation here. Further, the modified Root device is deemed to be capable of accomplishing this function in any case. Also, claim 6 in no way recites any restrictive dimensional limitations for such a vertical stand or the brush device itself.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Root '790 in view of Kristofek '078 as applied to claim 1 above, and further in view of Madison '102.

The patent to Madison '102 teaches a scrubbing brush device having a motor means 20 or 26 that imparts both a clockwise and counter-clockwise rotation (i.e., oscillates) to the brush when energized to operate (col. 4, lines 54-59). It would have been obvious to one of ordinary skill in the art to have provided the modified Root device with motor means that imparts both a clockwise and counter-clockwise rotation (i.e., oscillates) to the brush when energized to operate as taught by Madison '102 for the purpose of improving the scrubbing capabilities of the brush during cleaning.

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5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Root '790 in view of Kristofek '078 as applied to claims 1 and 4 above, and further in view of Armbruster '447.

The patent to Armbruster '447 teaches a bristled brush 36 that has a rubberized bumper or guard thereon. It would have been obvious to one of ordinary skill in the art to have provided the modified Root device with a bristled brush that has a rubberized bumper or guard thereon as taught by Armbruster '447 for protecting surrounding areas of the surface to be cleaned from damage. Note that in the modified Root device, the rubberized guard is deemed to face the swivel. Further, Root '790 is deemed to teach fine (merely relative), non-ceramic scratching bristles. The bristles can clearly "scratch" a surface.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Armbruster '605, Watson, Murphy, Park, and Rogers are relevant to telescoping handles and swiveling head designs.

7. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

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If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin
Primary Examiner
Art Unit 1744